

In the Matter of Merchant Mariner's Document No. Z-739044-D1 and all other Seaman Documents

Issued to: FRANCISCO CLEMENTE

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1141

FRANCISCO CLEMENTE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 15 January 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a utilityman on board the United States SS TIVIVES under authority of the document above described, on or about 30 August 1957, Appellant wrongfully assaulted and injured a crew member with a dangerous weapon, to wit: a knife.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification.

After considering the evidence including the testimony of the two seamen directly involved and two other crew members, the Examiner concluded that the charge and specification had been proved. He entered an order suspending all documents, issued to Appellant, for a period of twelve months.

FINDINGS OF FACT

On 30 August 1957, Appellant was serving as a utilityman on board the United States TIVIVES and acting under authority of his Merchant Mariner's Document No. Z-739044-D1 while the ship was at sea.

About 2200 on this date, Appellant and several other crew members including Raul I. Martinez, ordinary seaman, were on deck when an argument started between these two seamen. After Martinez pushed Appellant, he ran to a room and picked up a knife with a four-inch blade. When the argument continued, Appellant was taken to his room and Martinez was restrained by other members of the crew. A few minutes later, Martinez walked to the door of Appellant's room and called to him to come out. When Appellant came out into the passageway, Martinez grabbed Appellant's eyeglasses and threw them on the deck. Appellant then struck Martinez in the abdomen with the knife inflicting a wound about

three inches long which bled profusely. Martinez knocked Appellant to the deck and stamped on his face until pushed away by able seaman Morrell.

The knife injury was not a deep or serious one. It required no stitches. Martinez was placed on light duty and relieved of watches for eight days. Appellant was in the ship's hospital for several days as a result of the incident.

Appellant has no prior record. He has been going to sea since 1945.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1. The decision is against the weight of the evidence.
2. The alleged assault was an act of self-defense.
3. The Examiner admitted that Appellant was provoked by Martinez.
4. Appellant was actually found guilty of the offense of possession of a sheath knife rather than assault.
5. In view of these factors, appellant's retreat and his prior good record, the order is unjustifiably harsh.

Appearance: Willaim C. Chance, Jr., Esquire, of New York City, of Counsel

#### OPINION

The general exceptions raised on appeal are considered to be without merit and the decision of the Examiner will be sustained.

The Examiner stated that he believed the testimony of the eyewitness Morrell as to what occurred in the passageway. This version is corroborated by the testimony of Martinez and is set forth in the above findings of fact. The Examiner did not accept Appellant's testimony that he was pulled from his room into the passageway by Martinez, knocked to the deck, and that Martinez was injured while Appellant was waving the knife to fend off Martinez when he was stamping on Appellant's face. The record does not disclose any reason why the Examiner's findings as to credibility should be disturbed. On the contrary, it is unlikely that Appellant would have been able to reach high enough from his position on the deck to cut Martinez in the abdomen. The other witness at the hearing stated that he did not observe the vital sequence of events relative to just when Martinez was injured.

The Examiner has adequately disposed of all the contentions raised on appeal. He found that Martinez was the initial aggressor but that Appellant, in effect, became the aggressor when he voluntarily left his room and, by using the knife before he was knocked to the deck, employed excessive force to repel the attack by Martinez. In accordance with Commandant's Appeal Decisions Nos. 822 and 913, the Examiner found that Appellant had no legitimate claim of self-defense since he should have stayed in his room and locked the door rather than confront Martinez with a deadly weapon. Under these circumstances, it is clear that the decision is supported by substantial evidence and that Appellant was guilty not only of possession of a knife but the improper use of it.

The Examiner considered the aggressive attitude of Martinez and Appellant's prior good record before imposing the order of twelve months' suspension. Except for these factors, the order would be a lenient one for this serious infraction of shipboard discipline.

### ORDER

The order of the Examiner dated at New York, New York, on 15 January 1959, is **AFFIRMED**.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 11th day of February 1960.